FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4226 OF 2004

Office Notes, Office Memoranda appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Order

Mr.S.S.Patwardhan, for Petitioner.

Mr.S.V.Sadavarte, for Respondent

CORAM: D.K.DESHMUKH,J.

DATED: 13th July, 2005.

P.C.:-

Rule. By consent returnable forthwith.

By consent of parties, taken up for final hearing.

The executing court by order impugned has allowed the amendment in the pleadings as also in the decree. The learned counsel for the petitioner relied on the judgment in the case “Sunil Ishwarlal Damania Vs. Shivprasad Rungta and

another; 1985(2) Bombay Cases Reporter 123" to contend that as the decree was passed by the Appeal Court, an application for amendment in the decree could not have been entertained by the Executing court. On behalf of the Respondent, it is submitted that by the application not only amendment in the decree was sought but even amendment in the plaint was sought and therefore, the Executing Court could have granted amendment in the plaint. The learned counsel for the respondent initially contended that there is no ground mentioned in the petition that the application for amendment in the plaint cannot be entertained by the executing court. But it is found that such ground has in fact been raised in the petition. The learned Counsel for the respondent relied on the judgment of the Supreme Court in the case "Pasupuleti Venkateswarlu V. Motor and General Traders, AIR 1975 Supreme Court 1409" to contend that the executing court can permit

amendment in the plaint. Perusal of that judgment however, shows that the question whether the executing court can allow amendment in the plaint is neither considered nor decided. In my opinion, in the present case even if it is assumed that the executing court could have allowed the amendment in the plaint, in the present case no useful purpose will be served by merely allowing the amendment in the plaint without amending the decree because the description of the property in the decree is separately given and the description of the property in the plaint is merely adopted in the decree. The decision of this Court relied on by the petitioner in the case “Sunil Ishwarlal Damania Vs. Shivprasad Rungta and another; 1985(2) Bombay Cases Reporter 123” referred to above clearly lays down that the amendment in the decree could not have been allowed as the decree was passed by the Appellate Court. In this view of the matter therefore, in my opinion, the order impugned

in the petition is liable to be set aside. In the result therefore, the petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (a) and (b). The respondent is directed to pay cost of this petition to the petitioner as incurred by the petitioner.